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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/915,082

07/25/2001

Mark R. Potter

1662-38800 JMH
(P00-3561)

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7590

07/07/2005

EXAMINER

DU, THUAN N

HEWLETT PACKARD COMPANY
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INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

ART UNIT

PAPER NUMBER

2116

DATE MAILED: 07/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

87

Office Action Summary

Application No.

09/915,082

Applicant(s)

POTTER ET AL.

Examiner

Thuan N. Du

Art Unit

2116

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-42 are maintained for examination.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

3. Claim 5 recites the limitation "said state that consumes less power" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

4. Claims 1-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fung (U.S. Patent No. 6,859,882).
5. Regarding claims 1, 9, 14, 21-24, 26-29 and 35-42, Fung teaches a system, comprising:
a plurality of computers (server nodes) [col. 6, lines 14-17, 47-51], each computer capable of being in one of a plurality of power states (Modes 1-4) [col. 34, line 53 to col. 35, line 47]; and
a load balancer (128) and power management logic (MM 108) coupled to said computers and to a network (132) [Fig. 6], wherein said load balancer and power management logic identifies a computer that is operating less efficiently than another [col. 8, lines 25-32; col. 12, lines 13-24] and changes the power state of the identified computer based on the load of at least one of said plurality of computers [col. 8, lines 24-38; col. 11, lines 66-67; col. 12, lines 13-24].

Fung does not explicitly teach that the changing the power state of the computer(s) coupled to the network based on transactions on the network. However, Fung discloses that the power state (clock speed) of the computers could be adjusted based on demands by sensing the load for each of the computers [col. 8, lines 39-48]. One of ordinary skill in the art would have recognized that network transactions proportional to the assigned workload of the computer coupled to the network. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to recognize that Fung could also change the power state of at least one of said plurality of computers based on transaction on the network.

6. Regarding claim 2, Fung teaches that the network comprises the Internet [Figs. 1 and 6].

7. Regarding claims 3, 10-13 and 15, Fung teaches that the management module determines when an amount of transactions on said network drops below a threshold and when this occurs changes the power state of said identified computer to a state that uses less electrical power [col. 31, lines 21-40].

8. Regarding claims 4, 16 and 17, Fung teaches that a state that uses less power is a state in which the computer is off (Mode 4) [col. 35, lines 40-42].

9. Regarding claims 5 and 18-20, Fung teaches that a state that consumes less power is a state in which the identified computer is operational but with diminished capacity (Modes 2 and 3) [col. 8, lines 30-32; col. 34, lines 57-65; col. 35, lines 27-39].

10. Regarding claims 6 and 25, Fung teaches that the power state includes a state selected from the group consisting of fully operational (Mode 1), reduced power (Modes 2 and 3), and off (Mode 4) [col. 35, lines 63-65].

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11. Regarding claim 7, Fung teaches that in the reduced power state, the identified computer is operational at diminished capacity (Modes 2 and 3) [col. 34, lines 57-65; col. 35, lines 27-39].

12. Regarding claim 8, Fung teaches that the load balancer and power management logic identifies the computer that is operating less efficiently by considering how fast each of said computers responds to transactions [col. 8, lines 15-30].

13. Regarding claims 30-34, since they recite method of operating of the apparatus defined in the apparatus claims, they are rejected accordingly based on the rejection of the apparatus claims.

Response to Argument

14. Applicant's arguments filed on April 29, 2005 have been fully considered but they are not persuasive.

15. In response to applicants argued that Fung does not teach or suggest that "the load balancer and power management logic identifies a computer that is operating less efficiently than another computer" as claimed, examiner respectfully disagrees. Fung clearly identifies a computer (web server node) that is operating less efficiently, operate slower, than another computer (other nodes that have more capacity) [col. 8, lines 25-32].

Conclusion

16. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuan N. Du whose telephone number is (571) 272-3673. The examiner can normally be reached on Monday-Friday: 9:30 am - 6:00 pm, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H. Browne can be reached on (571) 272-3670.

Central TC telephone number is (571) 272-2100.

The fax number for the organization is (703) 872-9306.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).



Thuan N. Du
July 1, 2005